

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RIGOBERTO CANALES,

§

Petitioner,

§

v.

§

Civil Action No. **3:07-CV-78-L**

(filed by Petitioner as No. 3:06-CR-186)

UNITED STATES OF AMERICA,

§

Respondent.

§

ORDER

This action was brought by Petitioner as Motion for Relief under 28 U.S.C. § 2255.*

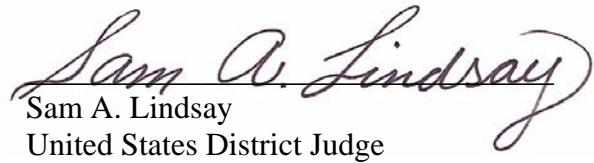
Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On January 16, 2007, the Findings and Recommendation of the United States Magistrate Judge were filed. Petitioner filed his Objections to Findings and Recommendations on January 24, 2007.

After making an independent review of the pleadings, file, and record in this case, the court determines that the findings and conclusions of the magistrate judge are correct. They are, therefore, accepted as those of the court. Accordingly, this case is **dismissed without prejudice** for lack of jurisdiction because this court has no jurisdiction to consider this petition while he has a direct appeal of his criminal conviction pending. Petitioner’s “objection” asks this court to hold in abeyance this action pending resolution (or dismissal) of his direct appeal. The court sees no reason

*Rigoberto Canales attempted to file this petition as a “motion” under his criminal case number 3:06-CR-186. The Clerk of Court’s office correctly processed his “motion” as a petition for the writ of habeas corpus under 28 U.S.C. § 2255, and assigned it a civil case number, accordingly.

to do so, since this dismissal will not preclude Petitioner from applying for habeas relief once his direct appeal is resolved. The court, therefore, **denies** his request and **overrules** the objection.

It is so ordered this 28th day of February, 2007.


Sam A. Lindsay
United States District Judge